IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE.

WRIT PETITION NO. 1594 OF 2006.

GTL Limited ... Petitioner.

V/s.

Masharashtra Rajya Rashtriya
Kamgar Sangh & ors. ... Respondent.

Shri J.P. Cama with Avinash K. Jalisatgi and Amol B. Desai for the petitioner.

Shri S.M.Oak with D.S. Nimbalkar for respondent No.1.

CORAM : V.C.DAGA, J.

DATED : 29.3 .2006.

JUDGMENT:

. This petition filed under Articles 226 and 227 of the Constitution of India is directed against the order dated 10.2.2006, passed below Ex.C-17 in Reference (IT) No.15 of 2004, by the Industrial Tribunal (Maharashtra), at Thane, refusing to remove from record discard additional written statement dated 4.4.2005 (Ex.CA-6) filed by the First Party contractor to the dispute.

Facts:

2. The brief facts noticed from the record are that the petitioner is engaged in the business of Process Outsourcing and Information Technology Services and Network Engineering.

3. The respondent No.1 is a trade Union

registered under the Trade Unions Act, 1926.

4. The respondent No.2 is the proprietress of M/s Classic Enteprises, who was a contractor engaged by the petitioner for its house keeping requirements at Electronic Sadan No. IV, TTC Industrial Area, MIDC, Mhape, Navi Mumbai- 400 701.

5. The industrial dispute between the parties gave rise to the conciliation proceedings; which, ultimately, resulted in failure. The failure report was submitted by the Conciliation Officer to the appropriate Government. Thereafter, appropriate Government referred the matter to the Industrial Tribunal,(Maharashtra), at Thane, for adjudication in accordance with law; being Reference (IT) No. 15/2004.

6. On being noticed respondent No.1 (the Union) filed statement of claim before the Industrial Tribunal, Thane. Petitioner (employer) filed written statement.

7. On being noticed, respondent No.2, who is the First Party No.2 filed her written statement on 21.1.2005 resisting contentions raised by the 2nd Party-Union, inter alia; on the grounds that 31 workmen involved in the instant Reference have been

in the employment of the First Party- Contractor on 1.2.2002, in house keeping work as per agreement dated 30.4.2002, signed with the First Party-Company as such they are the workers of the contractor. The said agreement has expired on 31.3.2005.

8. It appears that during the pendency of the reference proceeding, respondent No.2 issued one month's notice dated 3.3.2005 to terminate the house keeping contract w.e.f.1.4.2005. The respondent No.2 (contractor) filed application dated 17.3.2005 before the Industrial Tribunal, inter alia; praying for her discharge from the reference proceedings. The petitioner herein opposed the said application by filing its reply. However, no order was passed by the Industrial Tribunal on the said application of respondent No.2.

9. The First Party- Contractor by filing additional written statement at Ex.CA.6; dated 4.4.2005 has taken altogether a different stand, contending that from January, 2003 the First Party No.2-Contractor commenced the contract at the insistence of the First Party-Company by engaging some set of workmen; who were already in the employement and undertakes to do the work of house keeping. The First Party No.2-Contractor has not

engaged the concerned workmen. In otherwords, the contention souht to be raised in the additional written statement is that in real sense, the concerned workmen involved in the reference have not been engaged by the First Party No.2- Contractor by the petitioner-Company. The contractor contends that the first written statement was filed as per dictate of the company. It was filed under pressure of the party No.1-employer-Company.

10. The petitioner opposed an attempt to file additional written statement by respondent No.2 by applicatione application dated 25.8.2005 (Ex.C-17). The petitioner prayed for discarding additional written statement from the reference proceedings.

11. The Industrial Tribunal heard all the parties on the objections raised by the petitioner. However, Industrial Tribunal was please to overrule the objection raised by the petitioner and rejected the application dated 25.8.2005 vide its order dated 10.2.2006.

12. Being aggrieved by the aforesaid order dated 10.2.2006.2.2006 passed by the Industrial Tribunal, Thane, the petitioner has invoked writ jurisdiction of this Court under Articles 226 and 227 of the Constitution of India.

Submissions:

13. Shri Cama, learned Senior Counsel appearing for the petitioner urged that the Tribunal ex-facie erred in holding that Order 8 Rule 9 of the Code of Civil Procedure,1908 (CPC) empowers the Court to allow any party to file additional written statement at any time. According to him, a bare perusal of O.8 R.9 of CPC shows that it is for the Court to direct a party to file such additional written statement. The party sou-motu cannot file any additional written statement. In his submission, the purpose of this rule is to enable the Court to direct a party to file additional written statement if the original pleadings are vague. The said rule cannot be used to change original stand taken in defence so as to set up a totally new case. According to him, the reasons given by the Industrial Tribunal are totaly erroneous and perverse.

14. Shri Cama further submits that the Industrial Tribunal ex facie erred in holding that inconsistent pleas can be allowed to be taken in defence. In his submission, even by way of amendment, such contradictory and inconsistent pleadings cannot be permitted. He further submits

that the Tribunal has committed an error in enlarging the scope of section 11(1) of the Industrial Disputes Act. In his submission, the said section cannot be construed to empower the Industrial Tribunal to introduce a procedure which is not recognised by law. He sought to place reliance on Rule 16-A of the Industrial Disputes (Bombay) Rules in support of his submissions.

15. Mr.Cama, in order to buttress his submission relied upon some of the judgments of the Apex Court as well as of this Court . According to him, in **Heeralal vs. Kalyan Mal AIR 1998 SC 618**, the Apex Court ruled that in the garb of amendment to written statement, withdrawal of earlier admissions is not permissible. He further placed reliance on the judgment of the Apex Court in the case of **M/s Modi Spinning & Weaving Mills Co. Ltd. vs. Ladha Ram & Co. AIR 1977 SC 680,** wherein the Apex Court had an occasion to consider the same question once again as to whether defendant can be allowed to amend written statement by taking inconsistent pleas so as to take away admissions given in favour of the plaintiff in the earlier pleadings. It held that admissions once given cannot be allowed to be withdrawn.

16. Mr. Cama also relied upon a Division Bench judgment of this Court in the case of **MRF Ltd., Goa**

vs. Goa MRF Emoployees Union, Goa & anr.2003 II CLR 985, to contend that the Tribunal is a creature of statue as such it can only exercise those powers which are conferred upon it expressly or by necessary implication.

17. Mr. Cama, referring to Rule 16-A and submits that filing of additional written statement is not permissible. He thus, submits that the Tribunal has travelled beyond the powers conferred upon it. The impugned order, therefore, is liable to be quashed and set aside.

18. Per contra, Mr.S.M.Oak, learned Counsel appearing for the respondent submits the impugned order being interlocutory order, it need not be interfered with in exercise of the writ jurisdiction of this Court. In his submission, no case of irreparable loss, prejudice and/or injury has been made out by the petitioner. He submits that it has been consistent policy of this Court not to interfere with interlocutory orders of the subordinate Court unless there is failure of justice. He submits that the Industrial Tribunal has exercised its discretion by taking written statement on record after due application of mind which is evident from the contents of the impugned order itself, as such, this is not a fit case to

exercise writ jurisdiction. He placed reliance on the judgment of this Court in the case of Sriniwas Ram Kumar's case (supra), to contend that party can rely upon different rights alternatively and that there is nothing in the C.P.C. to prevent a party from making two or more inconsistent sets of allegations and claiming relief thereunder in the alternative. He also placed reliance on the judgment in the case of **Basavan Jaggu Dhobi vs. Sukhnandan Ramdas Chaudhario 1995 Supp.(3) SCC 179**; wherein the Apex Court ruled that it is open to the defendant to amend his written statement under Order 6 Rule 17 of CPC by taking a contrary stand than what was taken originally in the written statement. He further submits that an express grant of statutory power carries with it; by necessary implication; the authority to use all reasonable means to make such grant effective. He also placed reliance on the judgment of the Apex Court in the case of **I.T.O. vs. M.K. Mohd. Kunhi AIR 1969 SC 430.** He, thus, submits that petition is without any substance and the same be dismissed in limine.

The Issue:

19. The question which needs to be considered is whether the impugned order of the Tribunal is arbitrary and whethetr impugned order suffers from

any perversity warranting exerise of writ jurisdiction to set aside the same.

Consideration:

20. Having heard rival parties,and having perused impugned order, it is clear that the Tribunal after hearing parties prima facie; found that first written statement of the contractor placed on record was as per dictates of the First party-petitioner -Company and that it was obtained from the contractor under pressure and coercion. If pressure and coercision is proved, it will be no written statement in the eye of law. In order to bring factual position on record, the contractor was permitted to place on record an additional written statement.

21. The Tribunal while rejecting the contention of the petitioner-Company observed that filing of additional written statement-Company has not been foreign to the C.P.C. Under O.8 R.9 of the C.P.C., there is a provision conferring power on the Court that it may at any time require written statement or additional written statement from any of the parties and can fix a time for receiving the same. The Tribunal also tried to trace such power in its

favour under section 11 of the Industrial Disputes Act. The Tribunal relied upon judgment of the Apex Court in the case of **Grindlays Bank Ltd. vs.Central Government Industrial Tribunal, 1978 LLN. 110** and observed that section 11 (1) of the Industrial Disputes Act confers plenary power on the Tribunal to adopt such procedure as it may think fit to serve the ends of justice. The Tribunal, thus, refused to discard additional written statement. Thatt is how; it rejected application of the petitioner by the impugned order.

22. Before proceeding to consider rival submissions,it would be profitable to take survey of the statutory provisions:

O.VIII R.9 of C.P.C.

> . No pleading subsequent to written statement of a defendant other than by way of defence to a set-off (or counterclaim) shall be presented except by the leave of the Court and upon such terms as the Court thinks fit, but the Court may at any time require a written statement or additional written statement from any o the parties and fix a time for presenting the same."

23. Perusal of the aforesaid provision of O.VIII R.9 of the C.P.C. and the policy underlying the law of pleadings, it nowhere suggests that the new

written statement should be confined and/or restricted to the allegations made in the complaint and should not contain any other additional pleas.

24. The law relating to pleadings is not expected to be construed and applied with undue rigidity and strictness; if it is going to cause prejudice or embarrassment to the fair trial of the suit or complaint. It would of course, be open for the Court to consider whether or not, pleas taken are by way of afterthought; the pleas in question lack merit, but the right of the defendant to raise the new pleas could hardly be negatived by reference to the law of pleadings.

25. The sole object of the pleadings is to see in which area parties differ. Each side is expected to be fully alive to the question that are about to be argued, so that they get an opportunity to adduce appropriate evidence. If this object is achieved, then to rule out the amended pleadings would tend to defeat; instead of promoting the cause of justice. The rules of procedure exist only to serve ends of justice and not to defeat it.

25A. It is no doubt true that admissions cannot be allowed to be taken away from the pleadings as laid down by the Apex Court in the case of Modi Spg.

and Weaving Mills Ltd (Supra) followed in the case of Heeralal Kalyan Mal (Supra). However, law in this behalf has been explained later in the case of **Akshay Restaurant vs. P.Anjanappa AIR 1995 SC 1498**, permitting the parties to explain admission. There is no prohibition to take inconsistent pleas in the written statement. In the case of **Haridas Aildas vs. Godrej Rustom Kermani- 1984 (1) SCC 668**, the Apex Court ruled that said amendment should be liberally allowed if it is not going to cause prejudice or change nature of the suit.

26. The effect of amendment to pleading is either to substitute the pleading or to explain by incorporating additional pleading by resorting to amendment. No party is allowed to withdraw admission given in the pleading because withdrawal of the admission results in deletion of the pleadings right from inception from the record itself. While explaining admission, the original admission very much remains on record; whereas explanation by way of additional pleadings is taken on record either by way of additional written statement or in the form of additional para to be incorporated in the written statement.

27. It is true that so far as filing of additional written statement is concerned, it cannot

be permitted to be taken on record without leave of the Court. However, in the given circumstances, the Court has power to take additional written statement on record. Mere fact that the additional written statement has been permitted does not mean that any unfettered right is given to the defendant to raise any plea. At the commencement of the trial and/or before framing issues, Court can examine parties so as to ascertain the real area of dispute between the parties which will facilitate fair trial on disputed issues. At that stage, parties are free to confine or choose their defence. Defendant will have to choose a particular stand at the relevant crucial stage of the trial.

28. The Apex Court in the case of Firm Srinivas vs. Majabir Prasad, AIR 1951 SC 177 observed as under:

> . (B) Civil P.C. (5 of 1908), O.6, R.2 and O.7,R.7- PLEADINGS- Alternate and inconsistent allegations- Right to plead- Variance between pleading and proof.
>
> . A pltf. may rely upon different rights alternatively and there is nothing in the C.P.C. to prevent a party from making two or more inconsistent sets of allegations and claiming relief thereunder in the alternative. Ordinarily, the Ct. cannot grant relief to the plff. on a case for which there was no foundation in the pleadings which the other side was not called upon or had an opportunity to meet. But when the alternative case, which the plff.could have made, was not only admitted

> by the def., in his written statement, but was expressly put forward as an answer to the claim which the plff. made in the suit, there would be nothing improper in giving the plff. a decree upon the case which the deft. himself makes. A demand of the pltf. based on the deft's own plea cannot possibly be regarded with surprise by the latter and no question of adducing evidence on these facts would arise when they were expressly admitted by the defendant in his pleadings. In such circumstances. when no injustice can possibly result to the deft. it may not be proper to drive the pltf. To file a separate suit.
>
> . Thus, where in a suit for specific performance of a contract, in part performance of which the pltf. alleges to have paid the deft/ some money, the deft. denies the contract and pleads that the money was taken by him as a loan, the Ct. can pass a decree for recovery of the loan in favour of the plff. on his failure to prove the contract even though the plft. had failed to plead, and claim relief on, this alternative case."

29. In the case of Basavan Dhobhi (Supra), the Apex Court while dealing with more or less similar question ruled as under:

> . The Courts below have gone wrong in holding that it is not open to the defendant to amend his written statement under Order 6 Rule 17 CPC by taking a contrary stand than what was stated originally in the written statement. This is opposed to the settled law. It is open to a defendant to take even contrary stands or contradictory stands, thereby the case of action is not in any manner affected. That will apply only to a case of the plaint being amended so as to introduce a new cause of action."

30. The aforesaid two judgments would clearly establish that it is permissible for parties to take inconsistent and contrary stands contrary to what

was stated in their original written statement. If this is permitted, then one fails to understand why additional written statement taking contrary and inconsistent stand to the original one cannot be allowed. As already observed hereinabove, amendment by way of substitution results in substitution or deletion of the original admission or pleadings from the record. By allowing defendant or opponent to file additional written statement retaining original one on reord goes to the benefit of the plaintiff. If the additional written statement is allowed to be filed retaining original pleadings on record then it would not cause any prejudice to either of the parties because when case will come up for trial the parties will have to take a particular stand. They will have to opt for particular defence. Mere fact that additional written statement has been allowed will not give a right to the defendant to prove inconsistent pleas.

31. Turning to the facts of the case at hand, the controversy will have to be first determined before going to the trial; whether or not the first written statement was under duress or coercion. If party filing first written statement can successfully establish that the first written statement was filed under duress or coercion and/or pressure and/or misrepresentation of facts; then

the first written statement and pleadings contained therein will have to be thrown out and defence based on additional written statement will have to be considered and issues based thereon will have to be adjudicated upon. The party filing additional written statement was only permitted to raise inconsistent and contrary pleas with a right to choose or opt for a particular stand before the commencement of trial or at the time of determination of issues.

32. So far as power to take additional written statement on record is concerned, it would be profitable to refer to the judgment of the Apex Court in the case of Income-tax Officer (supra) wherein the Apex Court ruled as under:

> . "An express grant of statutory power carries with it by necessary implication the authority to use all reasonable means to make such grant effective. The powers which have been conferred by section 254 on the Appellate Tribunal with widest possible amplitude must carry with them by necessary implication all powers and duties incidental and necessary to make the exercise of those powers fully effective."

. On the same line, the Tribunal rightly referred to another judgment of the Apex Court in the case of Grindlays Bank Ltd.(Supra) wherein the Apex Court observed as under:

. " But it is a well- known rule of statutory construction that a Tribunal or body should be considered to be endowed with such ancillary or incidental powers as are necessary to discharge its functions effectively for the purpose of doing justice between the parties. In a case of this nature, we are of the view that the Tribunal should be considered as invested with such incidental or ancillary powers unless there is any indication in the statute to the contrary. We do not find any such statutory prohibition. On the other hand, there are indications to the contrary."

. In case of Akshay Restaurant (Supra), the Apex Court has observed as under:

. We find no force in this contention. It is settled law that even the admission can be explained and even inconsistent pleas could be taken in the pleadings. It is seen that in paragraph 6 of the written statement definite stand was taken but subsequently in the application for amendment, it was sought to be modified as indicated in the petition. In that view of the matter, we find that there is no irregularly committed by the High Court in exercising its power under section 115, C.P.C. in permitting amendment of the written statement."

33. After taking stock of the aforesaid decided cases and the law laid down by the Apex Court and also this Court, by no stretch of imagination, it can be said that the impugned order is unreasonable or perverse order warranting interference in the writ jurisdiction of this Court. The Court below has exercised discretion in accordance with law by permitting the contractor to file additional written statement in the peculiar facts of this case just to find out truth.

. Petition is accordingly dismissed in limine with no order as to costs.

(V.C.DAGA,J.)